

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Høegh Autoliners Shipping AS Co. (hereinafter "HAS"), P.O. Box 4 Skøyen, 0212, Oslo, Norway

I. RECITALS

- (1) Health and Safety Code (*H&SC*) Section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board (ARB) identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant.
- (2) Title13 CCR section 2299.2 (b) provides that the regulation applies to any person who own, operates, charters, rents, or leases any ocean-going vessel that operates in Regulated California Waters (RCW).
- (3) Title13 CCR section 2299.2 (e) (1), sets forth the operational requirements for fuel sulfur content limits for Auxiliary Diesel Engines, Main Engines and Auxiliary Boilers.
- (4) Title13 CCR, section 2299.2 (e) (2) sets forth the recordkeeping, reporting, and monitoring requirements.
- (5) The ARB, with the full cooperation of HAS, has reviewed relevant documents and information and has thereon alleges that a HAS owned vessel failed to fully complete the operational requirements of the regulation on 34 occasions. Specifically, ARB alleges that the vessel Høegh Inchon failed to perform the switchover to low-sulfur distillate fuels for its Main Engines and Boiler Engines before it entered Regulated California Waters (RCW) and visited ports in California 17 times between the dates of November 6, 2009 and July 18, 2011. The vessel Høegh Inchon used compliant low sulfur distillate fuel, with a sulfur content well below the legal requirement for its Auxiliary Engines on each of the subject port visits for the entire time and the vessel was within RCW.
- (6) Failure to properly complete the operational requirements of the regulation is a violation of state law and therefore subject to the imposition of penalties. *H&SC*, Sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorize civil or administrative penalties not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000) for each day that the violation occurs.

- (7) Any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay a Non-Compliance Fee. Persons shall pay the applicable fees prior to leaving the California port or at a later date approved by the Executive Officer. The Non-Compliance Fee for a 1st Port Visited is \$45,500. The vessel Höegh Inchon failed to make payment for the port visit on September 27, 2009.
- (8) The ARB, with the full assistance of HAS, has reviewed documents and information and there upon alleges that the failure to switchover to the required distillate fuel for its main engines and auxiliary boilers and may have provided a financial advantage for the vessel Höegh Inchon. ARB alleges that these savings for the 17 port calls in the aggregate may have been as high as \$16,000.
- (9) This Agreement is the compromise of the above-referenced disputed claims and shall never be treated as an admission of liability by either party for any purpose.
- (10) In order to resolve these alleged violations, HAS has taken, or agrees to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and full and complete settlement of this matter.
- (11) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and HAS agree as follows:

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against HAS for the alleged violations referred to above, the ARB and HAS agree as follows:

- 1) Upon execution of this Agreement, the sum of two hundred and ninety nine thousand and five hundred dollars (\$299,500.00) shall be paid on behalf of HAS within seven (7) business days following the execution of this agreement as follows: **\$299,500.00** to the **California Air Pollution Control Fund**. Checks shall be made payable to the "Air Pollution Control Fund". Checks with the signed agreement shall be sent to:

Alex Barber, Air Pollution Specialist/Investigator
Air Resources Board /Enforcement Division
9480 Telstar Ave. No. 4
El Monte, Ca 91731

- (2) HAS shall comply with CCR, Title 13, Section 2299.2 nor Title 17, Section 93118.2 (ATCM).

- (3) HAS shall accurately comply with fuel switchover and keep accurate records.
- (4) This Agreement constitutes the entire agreement and understanding between ARB and HAS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and HAS concerning the subject matter hereof.
- (5) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (6) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (7) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (8) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (9) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this Agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 42403.

The penalty in this strict liability case is a maximum of \$10,000.00 per day pursuant to Health and Safety Code section 39674. Alternatively, instead of performing the fuel switchover, the person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in RCW, can elect to pay the Non-Compliance Fees (NCF) for each port visit. For example, the NCF for a 1st Port Visited is a \$45,500 Per-Port Visit Fee. Persons must pay the applicable fees prior to leaving the California port or

at a later date approved by the Executive Officer. The penalty obtained in this strict liability case was calculated at \$7,000.00 per day for 34 days of alleged violations, plus \$16,000 for alleged fuel-cost-savings, plus a \$45,500 NCF, for a total penalty of \$299,500.00 after considering all factors specified in Health and Safety Code section 42403. The penalty reflects the fact that this was Höegh Autoliners Shipping Company AS's first violation, that ARB determined that HAS partially complied with the regulation on each port call, that the sulfur content of the distillate fuel actually consumed was actually lower than is required and that it cooperated fully with ARB's investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is Health and Safety Code section 39674 because HAS failed to comply with the Air Toxic Control Measure adopted under Health and Safety Code section 39600 et seq.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

Since the fuel used in the main engines and auxiliary boilers did not meet regulatory requirements, all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable.

- (10) HAS acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC sections 42403 and 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the exact hours of non-compliant operation, and the individual emission rates of the engines in violation are not known, it is not practical to quantify the excess emissions.
- (11) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted in the matter based on the fact that this was a first time violation, that HAS partially complied with

the regulations, that the sulfur content of the distillate fuel consumed was actually lower than required, and that HAS made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.

- (12) The penalty reflects ARB's assessment of the relative strength of its case against HAS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that HAS may have secured from its actions.
- (13) Now therefore, in consideration of the payment on behalf of HAS to the California Air Pollution Control Fund, the ARB hereby releases HAS and its principals, officers, agents, predecessors and successors, the vessel and her owners, charterers, managers, operators, renters, lessors, agents and respective principals, officers, agents, predecessors and successors from any and all claims for past violations of Health and Safety Code Sections 39650-39675 and CCR, title 13, section 2299.2, the ARB may have based on the circumstances described in paragraph (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James N. Goldstene

Title: Executive Officer

Date: 22 Feb 2013

Höegh Autoliners Shipping AS

By: 

Name: Roar Flom

Title: Board of Director

Date: 7 February 2013